

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-3, 5-11 and 13-18 are pending in this application. Claims 4 and 12 having been cancelled by this amendment without prejudice to the subject matter contained therein.

Information Disclosure Statement

Applicants thank the Examiner for indicating that the references submitted in the Information Disclosure Statement filed on October 21, 2005, have been considered.

Foreign Priority

Applicants note with appreciation the Examiner's acknowledgement that certified copies of all priority documents have been received by the U.S.P.T.O.

Drawings

Applicants also respectfully note that the present action does not indicate that the drawings have been accepted by the Examiner. Applicants respectfully request that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicants may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

Rejections under 35 U.S.C. § 101

Claims 1-18 stand rejected under 35 U.S.C. § 101 because the claimed invention allegedly is directed to non-statutory subject matter. Applicants respectfully traverse this rejection for the reasons detailed below.

As the Examiner is likely aware, on October 30, 2008, the Court of Appeals for the Federal Circuit (CAFC) issued a decision in *In re Bilski*, which addresses the test for patent-eligible processes within the meaning of 35 U.S.C. § 101. The decision in *Bilski*, essentially overruled the useful, concrete and tangible result test, and re-affirmed the tests set forth by the Supreme Court in *Diamond v. Diehr*, 450 U.S. 175 (1981). Namely, the CAFC in *Bilski* stated that "[a] claimed process is surely patent-eligible under § 101 if:

- (1) it is tied to a particular machine or apparatus, or
- (2) it transforms a particular article into a different state or thing.

Claim 1 recites:

A method for communication between **a vehicle** travelling along a route and a stationary system, **the vehicle including a communication unit** to communicate messages to the stationary system, the method comprising:
dividing the route into a plurality of partial sections;
defining for each partial section a required information flow from the vehicle;
creating a set of parameters for each partial section, the set of parameters define at least one of when messages are sent and the contents of the messages,
receiving the set of parameters for each partial section at **the vehicle communication unit**, and
adapting the communication based on said parameters, the adapting includes shifting between a time-controlled communication and a distance-controlled communication.

As the Examiner will appreciate, claim 1 is indeed tied to a particular machine or apparatus namely a “vehicle” where the vehicle includes “a communication unit.” Therefore, the method of claim 1 is statutory subject matter eligible. Claims 2-3, 5-11 and 13-18 are statutory at least for being dependent upon a statutory base claim.

The Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection to claims 1-3, 5-11 and 13-18 under 35 U.S.C. § 101. Claims 4 and 12 having been cancelled by this amendment.

Rejections under 35 U.S.C. § 112

Claims 10 and 11 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. Applicants have amended claims 10 and 11 taking into consideration the Examiner's comments. The Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection to claims 10 and 11 under 35 U.S.C. § 112.

Rejections under 35 U.S.C. § 102

Claims 1-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent Publication 2005/0190080 to Flick (“Flick”). Applicants respectfully traverse this rejection for the reasons detailed below.

Applicants have amended claim 1 to include the subject matter of original claim 4. In rejecting the subject matter of original claim 4, the Examiner asserts Flick teaches “adapting the communication based on said parameters, the adapting includes shifting between a time-controlled

communication and a distance-controlled communication,” as recited in amended claim 1. Applicants respectfully disagree.

The Examiner relies on paragraphs [0222]-[0237] of Flick in rejecting the aforementioned feature. Applicants respectfully disagree. At most, these paragraphs teach varying a **rate of transmission indicating a time-controlled communication** and that a tracking device may wait until a vehicle's position has changed if no acknowledgement has been received after sending an alert indication.

For example, paragraphs [0222]-[0223] of Flick describe varying the rate of transmission. In a first variation, the **rate of transmission** is reduced in an area where a user has a lesser interest in quickly updated information. In a second variation, the **rate of transmission** is increased if the vehicle's speed is above a preset speed. Clearly Flick describes varying the rate of transmission which indicates a time controlled communication, **not** “shifting between a time-controlled communication and a distance-controlled communication,” as required by claim 1.

As a second example, paragraph [0224] of Flick teaches that the tracking device sends an alert indication a set number of times without receiving an acknowledgement. The tracking device then **waits until the vehicle changes position** before sending another alert. Flick teaches that this process conserves power while a vehicle is obstructed by not sending alerts when the vehicle is unreachable. Clearly, Flick describes stopping alert transmissions when a vehicle's communication is obstructed, **not** “adapting the communication based on said parameters, the adapting includes shifting

between a time-controlled communication and a distance-controlled communication,” as required by claim 1.

Paragraphs [0226]-[0237] of Flick describe using codes on a control channel to turn a feature on or off. For example, a feature may be deactivating a receiver due to a non-paying customer. Paragraphs [0226]-[0237] of Flick do not teach the aforementioned feature of claim 1.

Because Flick does not teach or suggest each and every feature of claim 1, Flick does not anticipate or render claim 1 obvious. Claims 2-3, 5-11 and 13-18 are patentable at least by virtue of their dependency from claim 1.

The Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection to claims 1-3, 5-11 and 13-18 under 35 U.S.C. § 102(e). Claims 4 and 12 having been cancelled by this amendment.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.


Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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